

Proposed Amendments to Rule 7

Rule 7 is amended as follows:

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Consultation; Oral Argument; Response Time; Show Cause Order; Form of Motions

- (a) Pleadings. * * *
- (b) Motions; Consultation. * * *
- (c) Oral Argument. * * *
- (d) Time To Respond. * * *
- (e) Order To Show Cause. * * *
- (f) Form of Motions and Other Papers. * * *
- (g) Dispositive Motions Defined. * * *

PRACTICE COMMENT: * * *

PRACTICE COMMENT: [~~When a party is seeking a preliminary injunction, counsel shall, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971. When a preliminary injunction is sought in conjunction with the filing of a new action, counsel shall, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.~~]

When a preliminary injunction ("PI"), temporary restraining order ("TRO"), or show cause order requiring action within a time period shorter than provided for under the Court's Rules is sought in conjunction with the filing of a new action, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971, and, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.

Further, except as provided herein, in all other situations when a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971; except that, when a party is seeking a PI in accordance with USCIT R. 56.2 in an action under 28 U.S.C. § 1581(c) (and is not seeking the injunction in conjunction with the filing of a new action), no notice need be given to the Clerk's Office.

Further, when notifying the Clerk's Office that a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, counsel are also encouraged simultaneously, if not sooner, to provide courtesy notice of the

intended application to all other parties to the litigation; if any captioned party has not yet appeared through counsel, counsel are encouraged to provide courtesy notice to all relevant parties as identified in USCIT R. 4(a).

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; _____, eff. _____ 2007.)

ADVISORY COMMITTEE NOTE

The Advisory Committee recommends that the second Practice Comment to USCIT Rule 7 be revised to make the Practice Comment more consistent with USCIT Rule 65 and current CIT practice. The reasons for the specific proposed changes are discussed below.

The Practice Comment currently provides: “When a party is seeking a preliminary injunction, counsel shall, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk’s Office at 212-264-2971. When a preliminary injunction is sought in conjunction with the filing of a new action, counsel shall, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.”

Thus, the Practice Comment, as currently worded, makes no reference to motions for temporary restraining orders (“TROs”), which, like motions for preliminary injunctions (“PIs”), are covered by USCIT Rule 65. Further, the Practice Comment does not distinguish between motions for PIs in 28 U.S.C. § 1581(c) cases, which motions are also governed by the parameters of USCIT Rule 56.2, and motions for PIs in other types of cases. Finally, the Practice Comment does not take into account motions for orders to show cause, and in particular, such motions that ask for action on a schedule more expedited than that provided for by the USCIT Rules.

The Advisory Committee has reviewed the Practice Comment and is of the view that it is even more important that the Clerk’s Office be notified when a TRO is being sought. The reasons are several-fold. First, advance notice is particularly important when a motion for a TRO is sought in conjunction with the filing of a new action. Also, irrespective of the context in which filed, TROs can be issued on an ex parte and expedited basis. Lastly, while USCIT Rule 65 requires a party seeking a TRO to attempt to provide notice to the other side (normally the government), in practice, government counsel often receive notice belatedly. Notification of the Clerk’s Office can serve to remedy this, since the Clerk’s Office will then be aware that papers will be coming in, and can provide courtesy notification to government counsel. As a practical matter, this is what occurs today, except that the Clerk’s Office does not normally receive advance notice. Therefore, the Advisory Committee recommends adding TROs to the notice provision of the Practice Comment.

Further, the Advisory Committee notes the current practice in some cases before the Court for litigants to use show cause motions to seek expedited action by opposing counsel and/or the Court. In such situations, show cause motions are similar to motions for TROs. Therefore, the Advisory Committee also recommends adding such motions to the notice provision of the Practice Comment.

In addition, USCIT Rule 56.2(a) provides the normal timetable for when PI motions should be filed in actions under 28 U.S.C. § 1581(c). Accordingly, with one exception, the Advisory Committee does not believe it necessary for the Clerk's Office to be notified in advance of the filing of such motions. The exception would be if a motion for PI is sought in conjunction with the commencement of such an action. While this is not the normal course, in those rare cases where a party seeks an injunction immediately, the Advisory Committee recommends that the movant be encouraged to notify the Clerk's Office so that appropriate action can be taken.

Finally, the Advisory Committee recommends that counsel be encouraged to provide all other parties to the litigation with a courtesy notice of their intention to seek a PI, TRO, or order to show cause why a time period should not be shortened, at the same time that notice is given to the Clerk's Office. As these applications often seek an expedited proceeding, such early notice provides all parties with the greatest ability to resolve the matter prior to judicial involvement or to respond fully to the application. The Advisory Committee notes, however, that this should not be viewed as mandatory, since there can be instances where the exigencies of litigation preclude such notification.

The Advisory Committee therefore recommends that the second Practice Comment to CIT Rule 7 be amended, as discussed above.